THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.25525 of 1996

Date: 28-09-2007

Between:

M. Narsimha Reddy

... Petitioner

And

Government of India
Represented by its Principal Secretary
Ministry of Defence, Central Secretariat Buildings
New Delhi and others.

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Respondents

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ORDER:

This writ petition has been filed seeking a *Writ of Mandamus* to call the records relating to sale by 'open bidding' of flats as per notification in Telugu daily newspaper "Vaartha" dated 20-11-1996 and declare the same as arbitrary, illegal and without jurisdiction.

The case of the petitioner is that he is an ex-service man residing in a rental house and he does not own any house. He has been contributing, as ex-service man by way of monthly deduction from his salary to the service of Institute of the Indian Air Force, *inter alia,* which provides necessary financial help to the ex-service men, who are in the financial stringency, distress, particularly during illness of family members of ex-service personnel and is a caretaker welfare organization serving in the interest of ex-service personnel and service personnel of the Indian Air Force services.

The 2nd respondent, Indian Air Force Benevolent Association, is the Apex organization of the various state level service institutes. In the year 1977, the 2nd respondent was allotted six MIGH flats (Flat Nos.86 to 91) and four LIGH flats (Flat Nos.273 to 276) at Fathenagar (presently known as Bahrathnagar) Hyderabad. These flats have been acquired by the 2nd

respondent, for the avowed purpose of providing instant accommodation to widows and family members of
Air Force personnel, who were killed in action, or missing during active war service and meet such other emergent needs where it was unoccupied and these flats have been allotted to the families of ex-servicemen on marginal rental basis. By a recent advertisement in Telugu daily newspaper "Vaartha" dated 20-11-1996, respondents issued a notification calling for 'open bidding' in 'as is where is condition' for sale of the above flats. Pursuant to the said notification, the petitioner participated in the open bid for the various flats offered for sale. It is stated that the procedure adopted by the 2nd respondent during the course of open bid is arbitrary and illegal. It is also submitted that from a perusal of the stipulations for the sale of flats clearly indicate that the respondents herein with a pure commercial motive have invited 'open bidding' offers, abandoning the avowed purpose of catering to the emergency needs of service personnel of the Indian Air Force and Ex-service personnel. Therefore, he filed the present writ petition.

Respondents have filed counter and submitted that it is false that the petitioner has contributed as ex-serviceman by way of monthly deduction from his salary, in fact,
no contribution is received from Ex-servicemen by unit
S.I. Funds. The service institutes at most of the units are to look after the welfare of serving personnel and not
Ex-servicemen. IAFBA is a welfare unit of IAF with its only office located at New Delhi. The IAF Benevolent Association is an administrative body registered under India Society Regulation Act,

1860 having its registered office at New Delhi. It recovers a monthly subscription from the members being serving members at the rate of Rs.5/- from officers and Rs.3/- from Airmen and Rs.1/- from NCs(E). The sole aim of the association is to alleviate distress of its past persons and members in the different ways. It is further submitted that after 1971 India Pakistan War, IAFBA decided to purchase flats at various places in India accommodate temporarily the widows of Air force personnel killed in the War.

The association had purchased 10 flats from

A.P. Government. The Government of A.P. did not extend any subsidy or offered these flats at concessional rates. The full amount towards cost of the flats was paid by any other allottee. IAFBA is the absolute owner of the property. Allotment of the flats was not conditional on the part of the Government of A.P. This association being an absolute owner has the right to alienate the property in any way without any let or hindrance for the benefit of the association as decided by the executive body. On acquisition of these flats, the same were allotted temporarily to the widows of those whose husbands were killed in the war. It is now more than 25 years since the last war and the purpose for which the flats were acquired has been more than fulfilled.

The executive committee headed by its chief of the Air Staff decided after deliberation with other members that the flats be sold at fair price and sale proceeds be applied for various welfares schemes. Consequently, the organization has raised minor benefits as rehabilitation grant, lauching of various innovative welfare schemes such as super specialty veterans hospital at cost of 4.5 lakhs where free medical treatment is given to retired air force personnel senior citizens home at Thuglakabad was

constructed at a cost of five lakhs.

These are entirely funded by the association without support from the Government. It is stated that pursuant to the notification, the petitioner himself had applied for plot No.276 in open bidding. He had signed a statement stating that the auction was conducted in his presence on 27-11-1996.

An amount of Rs.20,000/- towards bid money was collected from each bidder. All the ten flats were sold to separate individuals and no individual was sold more than one flat. The bind money from the waiting list allotted was taken as there was no confirmed allotment. These policies were uniformly followed. Procedure for bidding and other terms of offers are explained to every one. As the offer was limited to one person one flat though none could choose any flat refusal to accept the bid money for second flat from one person who was already a successful bidder is correct as per the terms of offers as explained to all the 90 bidders present at that time. The contention of the petitioner was that the flat was reserved for bidding by ex-serviceman and service personnel are false and incorrect, as the flat was not placed for the auction.

As per the terms, bid money was collected from the individual and their names were registered.

It is also stated that the petitioner has filed O.S. No.707 of 1999 before the First Class Junior Civil Judge, City Civil Court at Secunderabad for recovery of the deposited amount towards the flat and the same is pending.

The petitioner filed counter reply stating that

O.S. No.707 of 2000 was initially filed on the file of XI Junior Civil

Judge, Secunderabad, seeking recovery of the earnest money deposit of Rs.20,000/-, during the pendency of the present writ petition. The said suit was, however, not prosecuted further, keeping in view the legal advice that the present writ petition is pending and that the present writ petition is the most efficacious remedy. As a matter of fact, the said suit is not pending as alleged in the counter affidavit.

Admittedly the petitioner has participated in the bidding pursuant to the notification issued by the 2nd respondent and did not succeeded for allotment of the quarter and hence now it is not open for him to question the said notification itself, unless there is any legal violation on the part of the respondents.

Having regard to the facts and circumstances of the case, I do not see any legal violation on the part of the 2nd respondent, moreover, the petitioner has participated in the bidding and he did not get the allotment of the flat. Further, the petitioner filed a suit for recovery of earnest money deposit and he did not mention anywhere in his affidavit that the suit is withdrawn. In view of the above circumstances, I am not inclined to grant any relief and the petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

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JUSTICE G. CHANDRAIAH

Date: 28-09-2007

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